

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Exemptions and special trade provisions

REVIEW OF RESOLUTIONS ON PLANTS AND PLANT TRADE
(RESOLUTIONS CONF. 9.19 AND CONF. 11.11) AND DEFINITION OF
'ARTIFICIALLY PROPAGATED' [DECISION 12.11 E)]

1. This document has been submitted by the United States of America as chairman of the working group of the Plants Committee on Resolutions pertaining to plants.

Introduction and historical background

2. In discussions at meetings of the Plants Committee prior to the twelfth meeting of the Conference of the Parties (CoP12), various problems were identified with regard to the interpretation and implementation of the Resolutions pertaining to trade in plants, especially Resolutions Conf. 9.19 on "Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species" and Conf. 11.11 on "Regulation of trade in plants." At the twelfth meeting of the Plants Committee (PC12, Leiden, May 2002), the Committee agreed that, following CoP 12 (Santiago 2002), it should devote attention to a review of these Resolutions to clarify and simplify them. This idea was included as a recommendation in the Chairman's report for CoP 12 and subsequently adopted as Decision 12.11, paragraph e):

"the Plants Committee shall...review the Resolutions concerning plants and the plant trade to improve their clarity and to facilitate their understanding through guides or other materials;"

3. At the thirteenth meeting of the Plants Committee (PC13, Geneva, August 2003), a working group was established to conduct a review of Resolutions Conf. 9.19 and Conf. 11.11. The primary difficulties with Resolution Conf. 9.19 appear to have been related to the wording used in the French and Spanish translations and not to a matter of overall substance. Therefore, the Chairman selected working group members to include native speakers of all three working languages of the Convention. She also included representatives of both Management and Scientific Authorities, to ensure that scientific as well as technical aspects of the Resolutions, and implementation issues would be addressed. The working group comprised representatives from the Scientific Authority of Chile, the Management and Scientific Authorities of France, the Scientific Authority of Mexico, the Management Authority and Scientific Authority of the United States of America (Chairman), and the Secretariat. The members of the working group conducted the review of the Resolutions intersessionally after PC13, and communicated with each other by e-mail. All members of the working group contributed comments and assisted in the drafting of revised text for the Resolutions.
4. At PC14 (Windhoek, February 2004), the working group reported to the Plants Committee on their progress. The chairman of the working group (United States of America) stated that the French- and Spanish-speaking members of the working group had made their recommendations for correcting translation errors in Resolution Conf. 9.19, and these were submitted in PC14 Doc. 7.4, Annexes 1 and 2. However, the chairman of the working group indicated that further discussion of Resolution Conf. 11.11 was needed. The working group was asked to continue to work during the meeting, with additional Parties and non-governmental organizations participating in the discussions. The working group reported back to the Plants Committee (PC14 WG4 Doc. 1), but noted that some issues were still unresolved, and additional discussion and revisions were necessary. The Chairman asked the original working group to continue their work and submit a document with suggested revisions to the Resolution.

Resolution Conf. 9.19

5. Suggested modifications to the French and Spanish versions of Resolution Conf. 9.19 from working group members entail primarily refinements to the wording of certain text and do not otherwise purport to modify the substance of the Resolution. The working group therefore recommends that the Secretariat make appropriate changes to the French and Spanish texts based on the suggestions of the working group, as noted in PC14 Doc. 7.4, Annexes 1 and 2.

Resolution Conf. 11.11

6. The review of Resolution Conf. 11.11 involved a review of its substance, including terminology used therein; the definition of 'artificially propagated'; and the issues of grafted plants; higher-taxon listings; hybrids; and the exemption for flaked seedlings of Appendix-I orchids. An overview of the proposed revisions follows. The revised document is contained in Annex 1 and reflects consensus of the working group, except as noted with regard to the definition of the term "artificially propagated."
7. *Preambular text:* The working group added language to the second paragraph beginning with "RECOGNIZING," to indicate that exemptions for flaked seedlings of orchids are based on the assumption that such specimens originate from closed nursery systems, and that trade in such specimens is *generally* not relevant to the conservation of the species in the wild, but that this has not always been found to be so. A preambular paragraph beginning with "RECOGNIZING ALSO" has been added to remind Parties that specimens of Appendix-I plants failing to qualify for the exemptions for artificially propagated specimens contained in Article VII, paragraphs 4 and 5, must be traded in accordance with the provisions of Article III. A paragraph beginning with "NOTING" was also added to remind Parties that the import of wild-collected specimens of Appendix-I plants for the establishment of a commercial operation for artificial propagation is prohibited by the Convention. (This paragraph was adapted from the preamble of Resolution Conf. 12.10, which similarly addresses the establishment of commercial operations for breeding Appendix-I animal species in captivity.)
8. *Artificially propagated specimens:* Previous discussions in meetings of the Plants Committee had focused largely on the definition of 'artificially propagated', which is somewhat convoluted and unclear. The working group attempted to clarify the definition while retaining its basic elements. Based on a recommendation of the Management Authority of Chile, the working group examined whether to amend the definition of "artificially propagated" to allow, in exceptional circumstances, for some Appendix-I plants grown from wild-collected seed to be treated as artificially propagated specimens if they meet certain conditions. The basis for Chile's recommendation is the practical limitations that might be experienced in an attempt to meet the requirements of the Convention for long-lived, late-maturing species, such as certain trees (e.g., *Araucaria araucana*). This alternative treatment is reflected in the paragraph beginning with "RECOMMENDS," presented in bold and brackets under "*Regarding the definition of 'artificially propagated'.*" However, the working group could not reach consensus on this alternative interpretation of the term "artificially propagated." Both the United States and the Secretariat oppose the inclusion of such provisions for applying the exemption for artificially propagated plant specimens for several reasons, including:
 - a) such an interpretation allows regular, repeated commercial trade in specimens that actually originate in the wild, which is a violation of the terms of the Convention, particularly with respect to Appendix-I species;
 - b) a more appropriate approach would be to apply the ranching provisions of Resolution Conf. 11.16, which includes many of the provisions advocated by Chile;
[We note, however, that this Resolution contains numerous references to animals and their various life stages, which caused the working group some difficulty in considering the application of this Resolution to plants.]
 - c) unlike the provisions for ranching or trade in Appendix-I animal species bred for commercial purposes, the proposed alternative does not include an opportunity for review by the Conference of the Parties;
 - d) such provisions would add to the complexity and inconsistency of how Appendix-I species are treated, and particularly because some countries in the past have mistakenly designated

plants grown from wild-collected seeds, when germinated under controlled conditions, as artificially propagated.

We should also note, however, that the recommendation from Chile was endorsed by the African Regional Representative to the Plants Committee (Donaldson), who is also Chairman of the IUCN Cycad Specialist Group. He indicated that such an approach might reduce collection pressure on wild populations by providing a source of legitimate specimens for the horticultural market.

9. *Grafted plants*: The treatment of grafted plants has been separated into its own section, with additional draft language to cover the case of a grafted plant consisting of a graft and rootstock of species listed in different Appendices.
10. *Higher-taxon listings*: The section on higher-taxon listings has been substantially reduced. Some of the original language from Resolution Conf. 11.11 was referred to the working group established at PC14 to evaluate the proposed revisions to Resolution Conf. 9.24 (Rev. CoP12) on "*Criteria for amendment of Appendices I and II*." The working group on plant Resolutions believed that the section on higher-taxon listings in Resolution Conf. 11.11 should more appropriately be included in the Resolution on listing criteria in the annex containing definitions, notes, and guidelines. However, some members of the working group felt that some mention of higher-taxon listings was warranted in the Resolution on plant trade to emphasize the importance of such listings to maintain effective control of trade.
11. *Hybrids*: The working group evaluated the section on hybrids to determine if any changes would make it more simple and understandable. However, it was finally determined that the current wording should be retained to avoid confusion or complications, particularly in the application of the Convention to artificially propagated hybrids of Appendix-I species.
12. *Flasked seedlings of Appendix-I orchids*: The exemption for flasked seedlings of Appendix-I orchids has been revised to make it clear that the exemption only applies if the specimens meet the definition of "artificially propagated," and to more clearly define the type of specimens involved.
13. The section "*Regarding rainsticks*" has been deleted because it repeats the same recommendation contained in Resolution Conf. 12.9 on "*Personal and household effects*." on rainsticks and enforcement for plants.
14. Paragraph c)iii) in the section "*Regarding trade in salvaged plant specimens*" has been modified to exclude the import of salvaged plant specimens by registered nurseries. This change was made because, for Appendix-I species, the treaty does not allow the import of specimens for commercial purposes, and such nurseries would presumably be commercial.
15. Paragraph e) in the section "*Regarding education about plant conservation through CITES*" was modified to clarify how artificial propagation should relate to the conservation of species in the wild.

Draft Revision of Resolution Conf. 11.11

Regulation of trade in plants

RECALLING Resolution Conf. 9.18 (Rev.), adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 10th meeting (Harare, 1997), relating to the implementation of CITES for plants;

AWARE that the Convention provides measures for international cooperation for the protection of certain species of wild plants against over-exploitation through international trade;

AWARE that the text of the Convention and several of the Resolutions of the Conference of the Parties on plants may not or could not have been drafted in the light of modern developments in plant propagation and of the trade in artificially propagated plants;

RECALLING the many specific problems the Parties to the Convention have faced and still face in implementing the Convention for plants;

RECOGNIZING that there are unique aspects of the plant trade and plant biology, such as those related to flaked orchid seedlings, that are not considered analogous to those for animals and that a different approach for plants is sometimes necessary;

RECOGNIZING that the control of the trade in flaked seedlings of orchids from closed nursery systems generally is not considered to be relevant to the protection of the natural populations of orchid species;

RECOGNIZING that many of the problems associated with regulating international trade in plants under the Convention involve artificially propagated specimens;

RECOGNIZING ALSO that the provisions of Article III of the Convention remain the basis for permitting trade in specimens of Appendix-I species of plants that do not qualify for the exemptions of paragraphs 4 and 5 of Article VII;

NOTING that import of wild-collected specimens of Appendix-I plant species for purposes of establishing a commercial operation for artificial propagation is precluded by Article III, paragraph 3 (c), of the Convention, as explained further in Resolution Conf. 5.10, adopted by the Conference of the Parties at its fifth meeting (Buenos Aires, 1985);

OBSERVING that certain Parties that export large quantities of artificially propagated plants need to find ways of reducing paperwork while maintaining protection for wild plants, and helping exporters of artificially propagated plants to understand and to comply with the requirements of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

Regarding the definition of “artificially propagated”

ADOPTS the following definitions for terms used in this Resolution:

- a) “under controlled conditions” means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather; and
- a) “cultivated parental stock” means the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the designated CITES authorities of the exporting country:

- i) established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; and
- ii) maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigor and productivity of the cultivated parental stock;

DETERMINES that the term 'artificially propagated' shall be interpreted to refer to plant specimens:

- a) grown under controlled conditions; and
- b) grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules that either are exempt or that have been derived from cultivated parental stock;

DETERMINES that plants grown from cuttings or divisions are considered to be "artificially propagated" only if the traded specimens do not contain any material collected from the wild;

[RECOMMENDS that an exception may be granted and specimens deemed to be artificially propagated if grown from wild-collected seeds or spores only if, for the taxon involved:

- a) **establishment of a cultivated parental stock presents significant difficulties in practice because specimens take a long time to reach reproductive age, as for many tree species**
- b) **the seeds or spores are collected from the wild and grown under controlled conditions within a range country;**
- c) **the relevant Management Authority of that range country has determined that the collection of seeds or spores was legal and consistent with relevant national laws for the protection and conservation of the species; and**
- d) **the relevant Scientific Authority of that range country has determined that:**
 - i) **collection of the seeds or spores was not detrimental to the survival of the species in the wild; and**
 - ii) **allowing trade in such specimens has a positive effect on the conservation of wild populations; and**
- e) **operations propagating Appendix-I species for commercial purposes under such conditions must be registered with the CITES Secretariat in accordance with Resolution Conf. 9.19, "Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species;]**

Regarding grafted plants

RECOMMENDS that:

- a) grafted plants shall be recognized as artificially propagated only when both the root-stock and the graft have been taken from specimens that have been artificially propagated in accordance with the definition above; and
- b) grafted specimens consisting of taxa from different Appendices shall be treated as specimens of the taxon included in the more restrictive Appendix;

Regarding hybrids

DETERMINES that:

- a) hybrids shall be subject to the provisions of the Convention even though not specifically included in the Appendices if one or both of their parents are of taxa included in the Appendices, unless the hybrids are excluded from CITES controls by a specific annotation in Appendix II or III; and
- b) regarding artificially propagated hybrids:
 - i) plant species or other taxa listed in Appendix I shall be annotated (in accordance with Article XV) if the provisions relevant to the most restrictive Appendix are to apply;
 - ii) if a plant species or other taxon listed in Appendix I is annotated, an export permit or re-export certificate shall be required for trade in specimens of all artificially propagated hybrids derived from it; but
 - iii) artificially propagated hybrids derived from one or more unannotated Appendix-I species or other taxa shall be regarded as being included in Appendix II and entitled therefore to all exemptions applicable to artificially propagated specimens of species listed in Appendix II;

Regarding flaked seedlings of Appendix-I orchids

RECOMMENDS that flaked seedlings of orchid species listed in Appendix I obtained *in vitro*, in solid or liquid media, and transported in sterile containers, be interpreted as being exempt from CITES control only if they have been artificially propagated in accordance with the definition provided above, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b)(iii), and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this exemption;

Regarding enforcement for plants

RECOMMENDS that Parties ensure that:

- a) enforcement officers are adequately informed of CITES requirements, procedures governing inspection and clearance of CITES plant specimens, and procedures necessary for the detection of illegal trade;
- b) enforcing agencies obtain access to materials and expertise enabling identification of plant specimens in trade, including whether the specimens are of wild or artificially propagated origin;
- c) enforcing agencies utilize annual reports, plant health documents, nursery catalogues and other sources of information to detect possible illegal trade; and
- d) enforcing agencies maintain close liaison with the Management and Scientific Authorities for the purpose of setting and implementing enforcement priorities;

Regarding trade in salvaged plant specimens

RECOMMENDS that:

- a) whenever possible, Parties ensure programmes of environment modification do not threaten the survival of plant species included in the CITES Appendices, and that protection of Appendix-I species *in situ* be considered as a national and international obligation;
- b) Parties establish salvaged specimens in cultivation where concerted attempts have failed to ensure that such programmes do not put at risk wild populations of species included in the CITES Appendices; and
- c) international trade in salvaged specimens of Appendix-I plants, and of Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild, be permitted where all of the following conditions are met:
 - i) such trade would clearly enhance the survival of the species, albeit not in the wild;

ii) import is for the purposes of care and propagation of the species; and

iii) import is by bona fide botanic garden or scientific institution;

Regarding education about plant conservation through CITES

RECOMMENDS that:

- a) Parties routinely provide updates of information on all aspects of CITES implementation for plants for publication in scientific, horticultural or plant trade journals and in the publications of plant associations;
- b) Parties regularly provide updates of information on all aspects of CITES implementation to botanic gardens, tourist organizations and relevant non-governmental organizations for further dissemination to the general public;
- c) Parties develop and maintain a good liaison with national plant-trade organizations, to inform them about all aspects of the implementation of CITES for plants, and to communicate to the Secretariat specific implementation problems presented by these national organizations, for consideration by the Plants Committee;
- d) the Secretariat develop and maintain a good liaison with international plant-trade organizations and botanic garden associations (in particular with the International Association of Botanic Gardens and Botanic Gardens Conservation International);
- e) the Secretariat distribute information on the potential conservation benefits that may be derived from artificial propagation and, where appropriate, encourage artificial propagation as an alternative to the removal of specimens from the wild; and

AMENDS Resolution Conf. 11.11 (Nairobi, 2000), Regulation of trade in plants.